Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2016 Biennial Review of Telecommunications Regulations	)	WC Docket No. 16-132
	)	
	)	

REPLY COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION

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I. INTRODUCTION AND SUMMARY.

> *It's an iron law of economics: You can't spend a dollar twice. That means every dollar spent complying with outdated, legacy regulations or maintaining creaky, aging networks is a dollar that can't be spent deploying next-generation infrastructure, like ultrafast fiber. New technologies, faster broadband, greater deployment—that's what consumers want, and that's what we should be aiming to deliver. – Commissioner Pai.*[1]

> *The petition before us presented an opportunity to break out of a time warp of the old debates and bygone market era of the Telecommunications Act's earliest days and adopt meaningful relief to enable companies to shift their resources to providing the new technologies and services that consumers are demanding. – Commissioner O'Rielly.*[2]

In their statements in the Commission's most recent order granting incumbent local exchange carriers ("ILECs") forbearance from outdated legacy obligations, Commissioners Pai and O'Rielly recognized the disproportionate regulatory burdens heaped on carriers like Frontier and that removal of those burdens is long overdue. That is precisely the purpose of the Biennial Review. As part of the 1996 Act, Congress gave the Commission this powerful tool – indeed

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[1] *See* Statement of Commissioner Pai, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015) ("*USTelecom Forbearance Order*").

[2] *See* Statement of Commissioner O'Rielly, *USTelecom Forbearance Order*.

mandate – to review all regulations of telecom providers and determine if the regulation is no longer necessary in the public interest as the result of meaningful economic competition.[3] If the FCC determines that regulation is no longer necessary, it must repeal or modify the regulation.[4] Frontier Communications Corporation ("Frontier") submits these reply comments in this proceeding[5] to echo the calls for the Commission to take a hard look at outdated rules, especially those that apply based on the "incumbent" moniker for incumbent local exchange carriers that no longer has any basis in reality or fact.[6]

No one seriously contends that "incumbent" local exchange carriers have any market power in the voice market – the underlying basis for the extensive disparate regulation of ILECs. Indeed, it is no longer clear that the voice market is a separate market from the transmission of data more generally. As Commissioner Pai, for example, has explained: "[V]oice is becoming just another application riding over the Internet backbone,"[7] And ILECs have no special advantage in the market for Internet service. As, for instance, Chairman Wheeler has acknowledged, cable has "become the nation's dominant broadband provider."[8] In other words,

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[3] *See* 47 U.S.C. § 161.

[4] *See id*.

[5] *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, Public Notice, 31 FCC Rcd 12166 (2016) ("*Public Notice*").

[6] *See* Comments of the United States Telecom Association, WC Docket No. 16-132 (Dec. 5, 2016) ("USTelecom Comments"); Comments of Verizon, Docket Nos. 16-131; 16-127; 16-128; 16-138; & 16-132 (Dec. 5, 2016) ("Verizon Comments"); Comments of CenturyLink, Docket Nos. 16-132; 16-120; & 16-138 (Dec. 5, 2016) ("CenturyLink Comments").

[7] *See* Remarks of FCC Commissioner Ajit Pai at the Hudson Institute, Washington, DC, *Two Paths to the Internet Protocol Transition*, at 5 (Mar. 7, 2013), available at http://go.usa.gov/B4gB.

[8] *See* Remarks of FCC Chairman Tom Wheeler at NCTA – INTX 2015, Chicago, IL (May 6, 2015).

any ILEC "regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[9] If the developments in the landline voice market since the Communications Act of 1934 and the Telecommunications Act of 1996 do not meet this statutory test, it is unclear that any market developments could ever meet the test for purposes of the Biennial Review.

Given these extensive changes in the telecommunications market since Title II was originally adopted in 1934 and revised in 1996, the Commission can act immediately to remove many of the now-outdated regulations promulgated under that Title. Indeed, the Commission's *Open Internet* forbearance framework may offer useful guidance. While Frontier continues to believe that applying monopoly-era Title II communications regulation to modern communications networks was a mistaken decision and should be reversed,[10] the Commission found that "over 700 Commission rules and regulations" were entirely unnecessary to apply to modern communications networks. By forbearing from over 700 rules, the Commission intended to design "a Title II tailored for the 21st century."[11] And just as the Commission found it necessary to "forbear from the vast majority of rules adopted under Title II" for broadband networks,[12] so too should it find these regulations outdated, improper, and unnecessary for the legacy voice network.

In taking a hard look as part of this proceeding at all of the outdated regulations under Title II – especially those regulations that apply due to a now meaningless "incumbent" status –

[9] *See* 47 U.S.C. § 161.

[10] *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*Open Internet Order*").

[11] *Id.* ¶ 5

[12] *Id.* ¶ 51.

there are several common sense updates, revisions, and repeals the Commission should make. The Commission can eliminate tariffing and Part 32 accounting requirements – outdated practices for a monopoly world, and areas the Commission has already recognized should be reformed. Additionally, the Commission should eliminate its unbundled network element rules – a framework that unfairly burdens just one set of competitors – and eliminate the requirement to go through complex filings and processes just to upgrade a network from copper to fiber. Further, the Commission must correct the current illegal and unfunded mandate for ILECs to provide voice service in certain areas by providing a voluntary opt-in funding mechanism or eliminating the obligation altogether (and making carriers whole for the period where they have been forced to provide service at great expense).

There are also several non-Title II requirements that the Commission should review. For example, the Commission unnecessarily enforces certain private contractual provisions through its network non-duplication and syndicated programming exclusivity rules. Extensive evidence shows that broadcasters already have disproportionate power in retransmission consent negotiations; there is no need for the Commission to add fuel to the fire through enforcement of these outdated provisions.[13] Additionally, the Commission can streamline its outage reporting rules, including by requiring only two, instead of three, reports following an outage, and by removing certain duplicative and burdensome requirements for high-cost recipients to resubmit outage reports and identify additional outages.

Given the significant amounts of outdated regulations applied to telecommunications providers – and in particular ILECs, which have been regulated by far the longest of any group of providers – these comments necessarily only scrape the surface of the regulations that need to

[13] *See* 47 C.F.R. §§ 76.92 *et seq.*

be reviewed and streamlined. Frontier looks forward to working expeditiously with the Commission to clear this regulatory underbrush and level the regulatory playing field so companies can focus on the hard work of expanding next-generation networks and deploying broadband across America.

II. BACKGROUND: ILEC "INCUMBENT" STATUS HAS LONG SINCE DISAPPEARED.

There is a mountain of evidence showing that, as the Commission has recognized, ILECs are no longer dominant – i.e., "incumbent" – in providing voice service to customers. But until the Commission takes more significant actions to level the regulatory playing field and remove all of the additional unnecessary regulations piled on ILECs, the data bears repeating. Commenters provided extensive data about how the market has changed from the 1934 world when original Title II regulation was adopted and has changed plenty more still since the 1996 Telecommunications Act that did not (and could not) foresee the rise of the Internet and the rise of cable, wireless, and other Internet providers.[14] Frontier adds to this robust record a few graphics that illustrate just how much the market has continued to evolve.

First, below is a graphic showing the "line loss" trends for ILECs.[15] As recently as 2003, 93% of telephone households subscribed to ILEC telephone service. Today, just 19% of telephone households subscribe to ILEC telephone service, and the trend appears to be continuing. 74% of the market has shifted over those thirteen years, but the disproportionate regulatory treatment of ILECs remains largely unchanged. In other words, as recently as 2003

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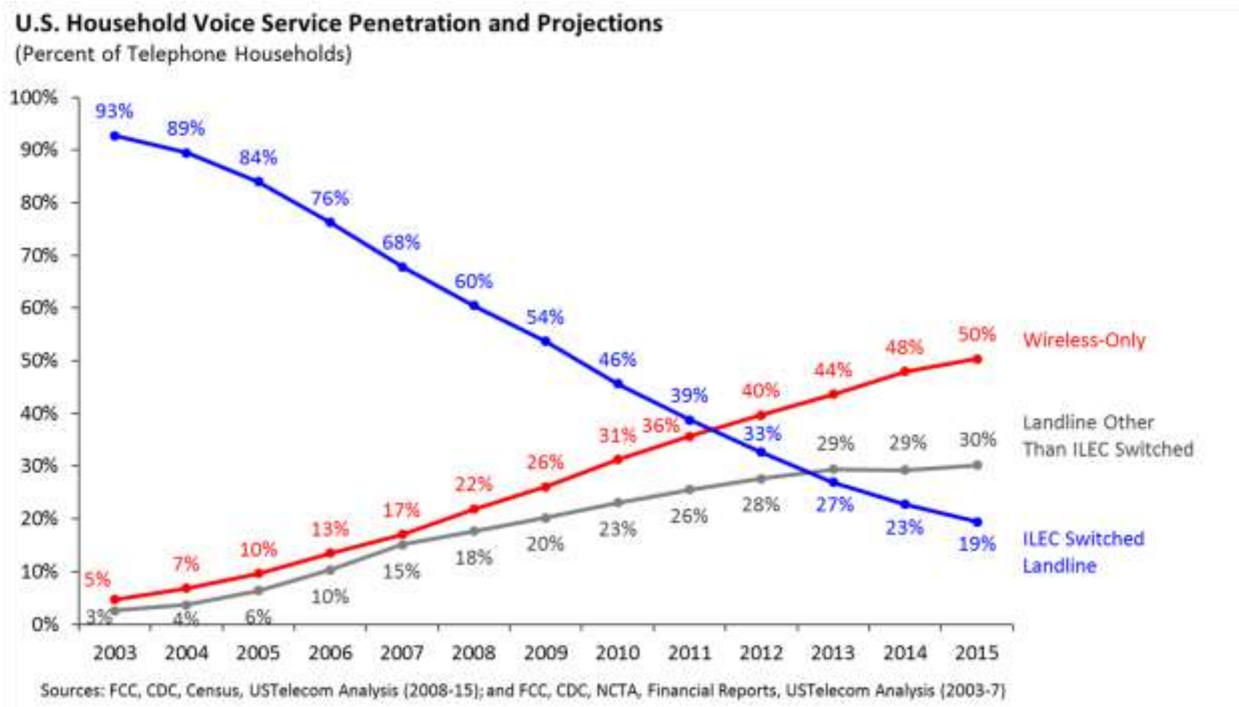
[14] USTelecom Comments at 1-6; CenturyLink Comments at 3-8; Verizon Comments at 1-3.

[15] *See* Patrick Brogan, Vice President of Industry Analysis, USTelecom, *Voice Competition Has Ended ILEC Dominance* (Apr. 30, 2014), http://bit.ly/2i36wDQ. For the chart included in these reply comments, USTelecom has provided updated 2013, 2014, and 2015 data based on its analysis of FCC, CDC, and Census data.

ILECs arguably had a monopoly position with respect to voice service for telephone households; now, they are the type of competitor with the smallest share of the market.



Again, ILECs have been subject to significant additional regulation because at the time of the 1934 Act, and even still at the the time of the 1996 Act, they had a virtual monopoly on the market for telephone service. The Supreme Court has explained the approach the United States has traditionally taken to deal with this monopoly challenge:

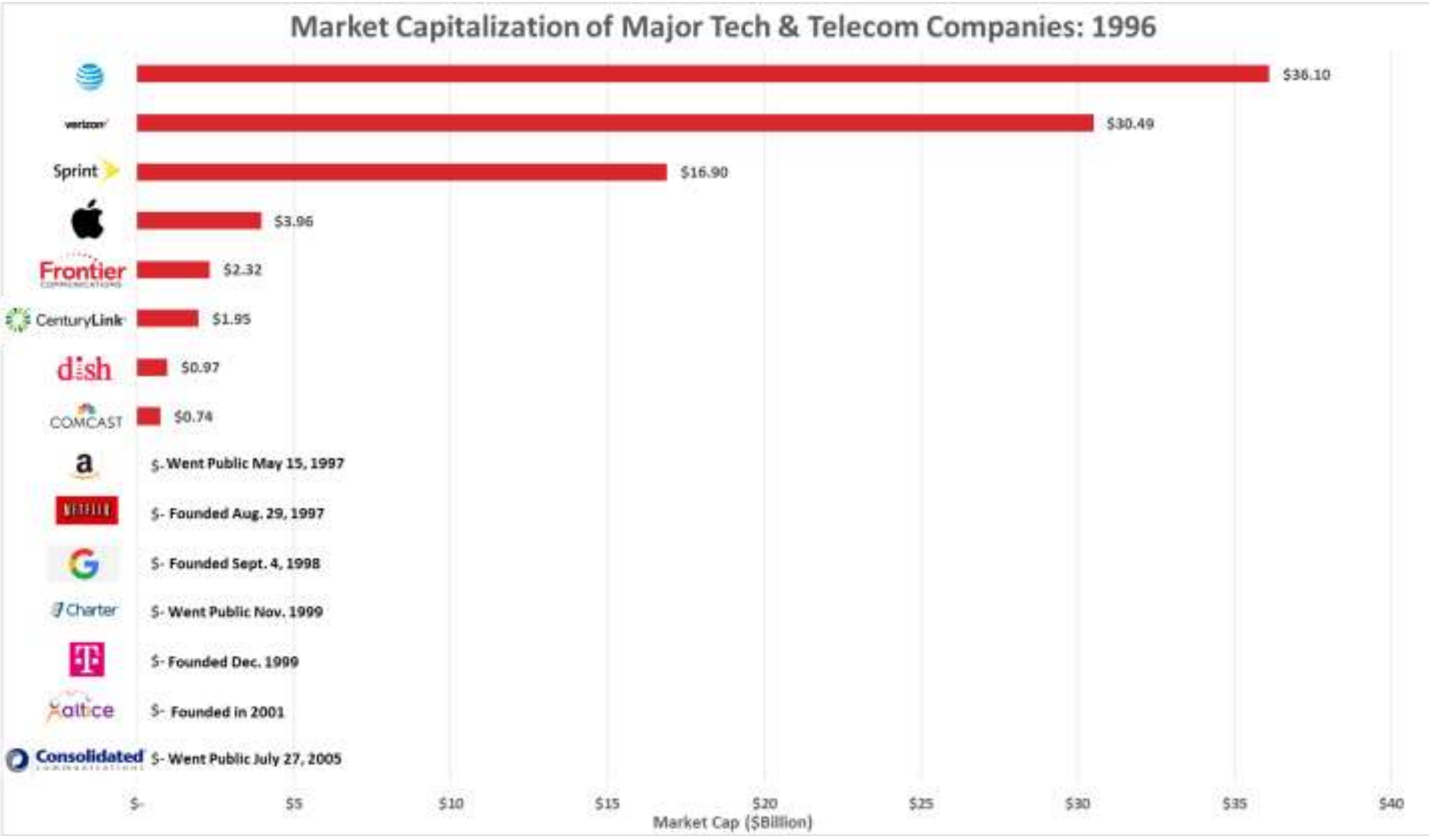
> At the dawn of modern utility regulation, in order to offset monopoly power and ensure affordable, stable public access to a utility's goods or services, legislatures enacted rate schedules to fix the prices a utility could charge. As this job became more complicated, legislatures established specialized administrative agencies, first local or state, then federal, to set and regulate rates.[16]

For more than 80 years, regulations have been piled on to ILECs based on this "monopoly" mindset, which still undergirds large swaths of the rules promulgated under

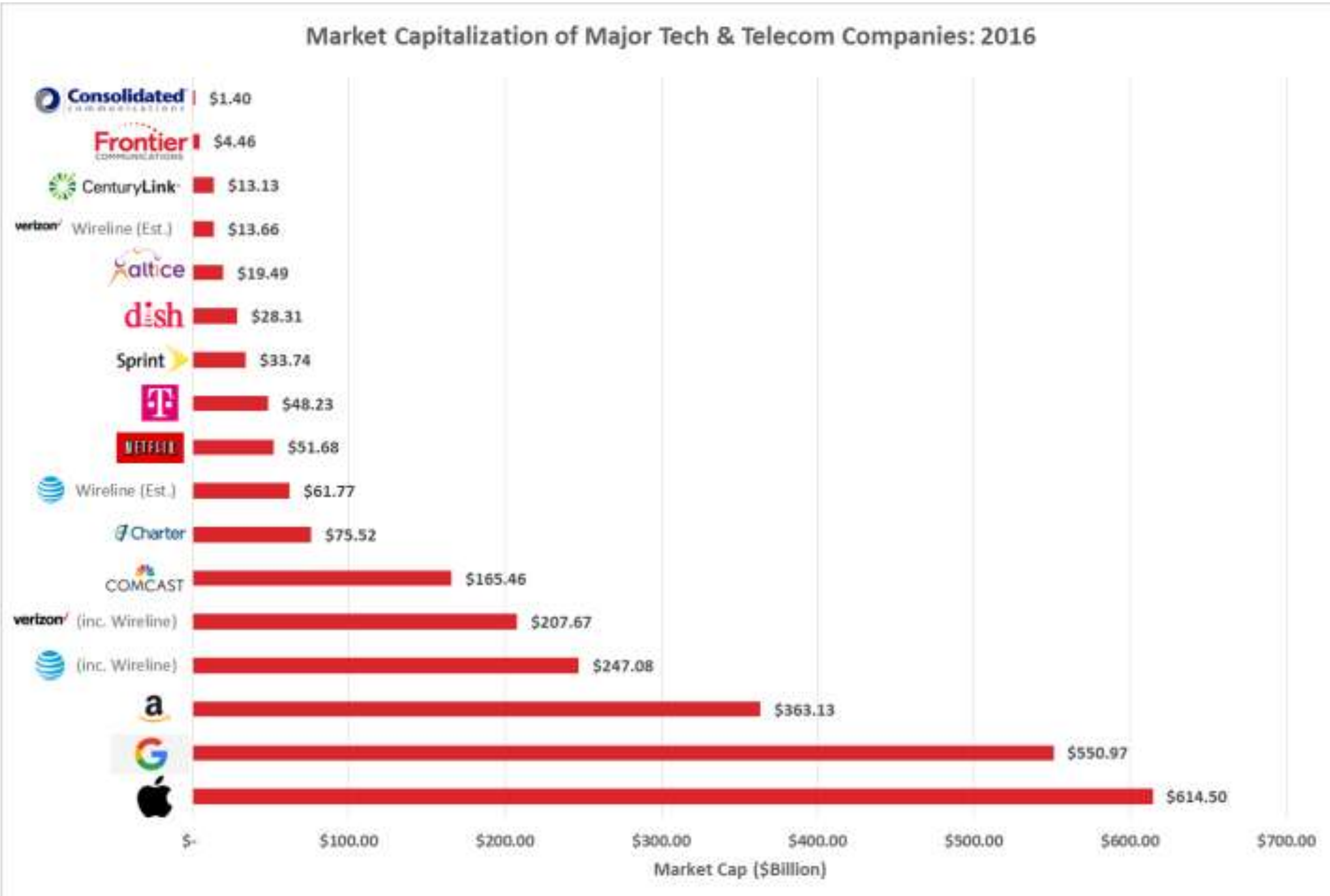
[16] *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 477 (2002).

Title II and indeed any of the rules that apply solely to ILECs based on their "incumbent" status. But as the above chart shows, any "incumbent" status or advantage has long since disappeared.

Of course, as anyone who has lived through the past twenty years since the 1996 Act knows, it is not just the market for telephone service that has undergone a transformation, but rather the larger tech and telecom market, with a massive shift in power not only to wireless and cable companies but perhaps more dramatically to "edge" providers. Below are two charts showing a sampling of the market capitalizations – the overall size of a company – of major tech and telecom companies at the time of the 1996 Act and today. As you can see, at the time of the 1996 Act, ILECs like AT&T and Verizon were among the largest tech and telecom companies. Even long distance companies – like Sprint – had large market capitalizations. Cable and wireless companies do not appear to be a major force. For example, Frontier had a three times larger market capitalization than Comcast. T-Mobile had not even been founded.



Fast forward 20 years to today, and the market appears to have been flipped on its head. The wireline providers are among the smallest of the major tech and telecom companies. It is now the wireless and cable companies with market capitalizations dozens or in some cases hundreds of times the market capitalization of wireline companies. And edge providers that did not exist or were not public in 1996 – companies like Amazon, Google, and Netflix – are now among the most valuable tech companies, with the device manufacturer, Apple, currently the most valuable of these companies.



While the market has shifted so dramatically in the past twenty years, one thing has remained the same – the disproportionate regulatory treatment of ILECs, which are still treated as "incumbent" monopoly providers even though that assumption no longer makes any sense. The Biennial Review offers the Commission an opportunity to correct these outdated regulations and level the regulatory playing field.

III. TITLE II WAS DESIGNED FOR A DIFFERENT, BYGONE ERA, AND AS SHOWN BY THE BLANKET FORBEARANCE IN THE *OPEN INTERNET* DECISION, BROAD SWATHS OF REGULATION UNDER TITLE II CAN BE REPEALED.

The record shows broad support for reexamining wide swaths of Title II, especially those regulations "that apply to providers solely by virtue of their regulatory label as . . . ILECs to determine if they are no longer necessary in the public interest as the result of meaningful economic competition from cable companies, CLECs, wireless companies, VoIP providers, edge providers and other competitors."[17] While the Commission should reverse its decision to apply monopoly-era Title II regulations to the Internet, its *Open Internet* decision and the regulations the Commission decided to forbear from in that decision may lay the groundwork for the provisions that should no longer apply to ILECs.

A. The Commission Should Repeal All of Title II to at Least the Same Extent that it Decided to "Forbear" from Applying Title II to Internet Services.

Given all of the market changes since the Communications Act of 1934 and the Telecommunications Act of 1996, how would the Commission decide which regulations promulgated under Title II should no longer apply to modern communications technologies in 2017? For all of the problems with the Commission's decision to apply outdated "utility-style provisions" to modern communications networks in the recent *Open Internet Order*,[18] the Commission laid a clear path for identifying the regulations that should no longer apply to ILECs and other voice providers subject to Title II. If these regulations were not necessary for the Internet – where cable is arguably the incumbent provider – they are certainly not necessary for telephone service, where ILECs have less than 20% penetration of the U.S. telephone households.

In the *Open Internet Order*, the Commission reviewed Title II in depth and decided that "*over 700 Commission rules and regulations*" should not apply to modern communications

[17] *See* USTelecom Comments at 8-9; *see also* CenturyLink Comments at 8-18; Verizon Comments at 9-14.

[18] *See Open Internet Order* ¶ 58.

networks.[19] Intending to create "a Title II tailored for the 21st century," the Commission "expressly eschew[ed] the future use of prescriptive, industry-wide rate regulation."[20] Acknowledging that these existing 700 regulations (which, of course, still apply to ILECs like Frontier) stifle investment, the Commission explained that with forbearance, "network operators can continue to reap the benefits of their investments."[21]

Indeed, the Commission expressly recognized that Title II unfairly burdened ILECs, even if it did not take any meaningful actions to relieve those burdens, and in other proceedings only proposed to add to them further. According to the Commission: "*Unlike the application of Title II to incumbent wireline companies in the 20th Century*, a swath of utility-style provisions (including tariffing) will not be applied."[22] In other words, the Commission argued that there is no reason to worry about applying Title II to the Internet because Title II does not have to be as incredibly burdensome as it remains to be for ILECs.

The Commission specifically identified the low-hanging fruit of Title II overregulation and the provisions that most distort investment: "This includes no unbundling of last-mile facilities, no tariffing, no rate regulation, and no cost accounting rules."[23] That is, those legacy obligations like unbundling and tariffing have no place in the modern competitive era, and they only slow investment and add unnecessary obligations.

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[19] *Id.* ¶ 5 (emphasis added).

[20] *Id.*

[21] *Id.*

[22] *Id.* ¶ 38 (emphasis added).

[23] *Id.* ¶ 37.

Frontier, like other commenters, wholeheartedly supports the Commission reversing its decision to reclassify Internet service as a Title II service.[24] At the same time, the Commission's decision provides a roadmap for this Biennial Review in identifying the 700 Title II regulations that no longer make any sense, particularly the "unbundling of last-mile facilities, . . . tariffing, . . . rate regulation, and . . . cost accounting rules."[25]

B. Common-Sense Updates.

Given the over eighty years of regulatory underbrush that has developed since the Commission originally adopted Title II in the Communications Act of 1934, it is not possible for any commenter to comprehensively identify all the regulations that should be repealed or modified. Of course, any regulations that apply solely to "incumbent" providers need to be removed, and the Commission has already identified 700 rules and regulations as part of the *Open Internet Order* that are ripe for repeal. Here, Frontier provides some of the common-sense updates that Frontier believes the Commission should approach first. Again, this list should in no way be taken as a comprehensive compendium of all the regulations required to be removed.

1. Eliminate Tariffing.

As USTelecom explains, like much of Title II, "[t]ariffs once served a vital purpose in the monopoly era of telecommunications, and were necessary to ensure that telephone carriers did not offer their services in a discriminatory manner."[26] Today, however, "there is ample competition,"[27] yet only one class of provider still remains subject to those tariffing

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[24] *See* USTelecom Comments at 10-11; CenturyLink Comments at 20-22.

[25] *Id.* ¶ 37.

[26] *See* USTelecom Comments at 11.

[27] *See id.*

requirements. As the Commission recognized in its *Open Internet Order*,[28] and as Chairman Wheeler seemed to recognize in the business data services proceeding,[29] it is well past the time for the Commission to remove tariffing requirements.[30]

If it is not possible for the Commission to remove the tariffing requirements immediately as part of this Biennial Review proceeding, the Commission should at a minimum allow price cap ILECs to at least offer lower prices for business data services ("BDS") throughout their footprints through contract-based tariffs. As USTelecom explains, "the Commission could repeal mandatory tariffing for non-rate-of-return companies to allow negotiated contracting."[31] Similarly, CenturyLink asks for the same relief: **"**In due time, the Commission should update these rules to eliminate pricing regulation in areas in which one or more competitors offer a substitute service. But, in this biennial review, the Commission should modify its rules to allow price cap LECs to offer contract-based tariffs on a nationwide basis."[32]

Simply put, there is no reason for the Commission to continue standing in the way of ILECs offering competitive pricing. By allowing price cap ILECs the ability to offer contract pricing throughout their footprint, the Commission would enable ILECs to better compete in the BDS market, reduce prices for consumers, and reduce distortions of investment.

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[28] *Open Internet Order* ¶ 37.

[29] *See, e.g.*, Remarks of FCC Chairman Tom Wheeler at the INCOMPAS Policy Summit, National Harbor, MD (Apr. 11, 2016) ("[W]e propose that tariffing of BDS be ended in all markets, for all BDS products."), *available at* http://bit.ly/1stprg8.

[30] *See* USTelecom Comments at 11; CenturyLink Comments at 12; Verizon Comments at 9-10.

[31] USTelecom Comments at 12.

[32] CenturyLink Comments at 12.

2. Eliminate Duplicative Part 32 Accounting.

Eliminating antiquated Part 32 accounting requirements is another common sense step to reduce regulatory distortions and incentivize investment. Unlike, for example, cable or wireless competitors, ILECs have to keep a parallel set of books – at great expense – under Part 32 due to their "incumbent" status. As USTelecom notes, FCC staff actually "recommended that some but not all of these regulations be modified or eliminated as part of the 2012 biennial review."[33] Likewise, Verizon notes that "[t]he Commission already has acknowledged that 'in light of [its] actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, it is likely appropriate to streamline the existing rules.'"[34] CenturyLink too explains that "price cap regulation is now the norm and, thus, any current federal regulatory data needs can be satisfied under GAAP accounting."[35] Whether the Commission lays Part 32 to rest as part of this Biennial Review or as part of the open Part 32 proceeding,[36] this common-sense step is long overdue.

3. Eliminate Unbundled Network Element Requirements.

Twenty years after being implemented, it is now clear that Unbundled Network Element ("UNE") rules have outlived their usefulness and any benefit they provide to the public interest. Whatever the merits of UNEs were at the time of the 1996 Act, the UNE rules have been effectively superseded by technological development, evolving end-user demand, and market

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[33] USTelecom Comments at 9 n.25 (citing *2012 Biennial Review of Telecommunications Regulations*, Public Notice, 28 FCC Rcd 11255 (Aug. 6, 2013)).

[34] Verizon Comments at 11 (quoting *Comprehensive Review of the Part 32 Uniform System of Accounts*, Notice of Proposed Rulemaking, 31 FCC Rcd 3599 ¶ 1 (2014) ("*Part 32 NPRM*")).

[35] CenturyLink Comments at 17.

[36] *See Part 32 NPRM*.

competition. As CenturyLink, for example, explains, 75 pages of the C.F.R. are "dedicated to implementing 47 U.S.C. § 251(c) and UNE access"[37] – a burden that falls on only one set of providers – "incumbent" local exchange carriers. These rules require only ILECs – not cable, wireless or CLECs – to provide "interconnection at any technically feasible point . . . at rock-bottom TELRIC rates; access to network elements comprising nearly every component comprising ILEC networks; . . . resale of all ILEC telecommunications services at discounted rates; detailed notice of network changes; and collocation of CLEC equipment in central offices and other ILEC locations."[38] Unless CLECs, wireless companies, and cable companies are required to provide the same benefits to ILECs, these rules must be removed immediately. ILECs cannot continue to shoulder these substantial burdens that distort investment decisions and deter facilities-based investment.[39] At a minimum, the Commission should remove any UNE requirements for next-generation deployments, remove any ability for companies to invoke new UNE rights, and to the extent more time is necessary, adopt a hard sunset date for all UNE requirements.

4. Incentivize Next-Generation Deployments.

By removing the obligations and processes associated only with ILECs upgrading their networks, the Commission has an opportunity to incentivize and speed next-generation deployments. Over the past few years, in the name of encouraging technology transitions, the Commission has heaped on filing requirements and approval processes if a carrier like Frontier wants to upgrade its infrastructure from copper to fiber. Such fiber investment is plainly in the

[37] *See* CenturyLink Comments at 11.

[38] *See id.*

[39] *See* USTelecom Comments at 8.

public interest, and any FCC rules should not require excessive filing requirements, lead times, or approval processes.

To give a few concrete examples of the difficulty of these rules, the Commission is encouraging carriers like Frontier to invest in fiber through the Connect America Fund. However, if Frontier plans to retire copper as part of these upgrades, Frontier must provide more than 6 months advance notice, even though the Commission is encouraging these upgrades and even though the Commission is providing funding for these upgrades precisely because there is currently a limited business case to invest in these areas based on the relative population density. Similarly, Frontier recently had to file a petition for waiver of the copper retirement rules in order to upgrade plant to fiber in an emergency situation involving a contractor cutting through a copper line.[40] This petition was required despite the fact that all end users actually affected were happy to receive the upgraded equipment and despite the fact that no competing carriers relied on these facilities (or for that matter, other residential facilities in the wire center).[41]

The Commission should remove these copper retirement notification requirements – or at least reduce the time period to one month (and remove them in emergency situations), and not require them if no CLECs actually use the facilities. Additionally, as USTelecom explains, the Commission should remove the current requirement of filing a Section 214 discontinuance application whenever they upgrade from copper to fiber.[42] Specifically, the Commission should "reverse its declaratory ruling purporting to clarify that the Commission will use a 'functional test' to determine when a network change constitutes a section 214 'discontinuance, reduction, or

[40] *See* Frontier Communications, Petition for Waiver, Inbox-51.329 (Oct. 21, 2016).

[41] *See generally id.*

[42] USTelecom Comments at 15.

impairment of service.'"[43] USTelecom currently has a petition for review on this issue before the D.C. Circuit Court of Appeals,[44] and in addition to correcting this section 214 issue as part of this Biennial Review proceeding, the Commission can and should consider altering its litigation stance in court. It is absurd that the Commission would require Frontier to file a discontinuance application when it is upgrading customer facilities from copper to fiber.

Repealing the copper retirement rules and confirming that carriers do not need to file discontinuance applications when deploying battle-tested next-generation fiber infrastructure would promote deployment and benefit the public interest.

5. Fund Eligible Telecommunications Carrier Universal Service Requirements.

The Commission must immediately correct the illegal unfunded mandate it places only on ILECs to provide landline voice service in areas they no longer receive funding.[45] As USTelecom explains, "price cap carriers remain subject to the obligation to provide voice service until they are replaced by an ETC that is required to provide voice and broadband services to fixed locations or until they relinquish their ETC designations."[46] According to the FCC's own calculation, this unfunded obligation costs carriers more than $1 billion annually.[47]

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[43] *Id.*

[44] See Brief for Petitioner USTelecom, *USTelecom v. FCC*, Case No. 15-1414 (D.C. Cir., filed Jun. 14, 2016).

[45] A petition for review challenging this unfunded mandate has been filed in the D.C. Circuit Court of Appeals. *See* Brief for Petitioners AT&T Inc. and CenturyLink, Inc., *AT&T Inc. and CenturyLink, Inc. v. FCC*, Case No. 15-1038 (D.C. Cir., filed Jul. 12, 2016). While the Commission can correct its heretofore illegal actions as part of this Biennial Review process, it can and should also consider adjusting its legal position before the D.C. Circuit in this case.

[46] USTelecom Comments at 13.

[47] *Id.*

CenturyLink, Verizon, and USTelecom all called for the Commission to correct this problem as soon as possible.[48]

Fortunately, the solution to the problem is relatively straightforward. As, for example, CenturyLink explains: "The Commission needs to either provide high-cost support in all areas where it continues to impose ETC obligations (while it completes its transition) or immediately eliminate ETC obligations in high-cost areas where price cap carriers are not receiving high-cost support."[49] Similar to the Commission's recent reforms in the Rate-of-Return Order, the Commission could allow carriers to opt-in to funding if they choose to retain the obligation. CenturyLink and Frontier[50] as well as USTelecom[51] have offered straightforward methodologies for funding this obligation based on the support that carriers received for these areas until funding was abruptly cutoff January 1, 2015. While solving this problem justly entails the outlay of some additional capital, this is precisely the intended purpose of the CAF reserve account held by the Universal Service Administrative Company; indeed, the Commission recently recognized the value of this reserve fund as part of the solution to the oversubscription to the rate-of-return model.[52]

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[48] *See id.*; Verizon Comments at 12-13; CenturyLink Comments at 15.

[49] CenturyLink Comments at 14.

[50] *See* Letter from L. Charles Keller, Counsel to Frontier and CenturyLink, to Marlene Dortch, FCC, Docket No. 10-90 (Feb. 23, 2016).

[51] *See* Letter from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, Docket No. 10-90 (Mar. 21, 2016).

[52] *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-178, Docket No. 10-90 (Dec. 20, 2016).

IV. REPEAL NETWORK NON-DUPLICATION AND SYNDICATED PROGRAMMING EXCLUSIVITY RULES.

It is no secret that the current framework for retransmission negotiations is imbalanced and is driving increasing retransmission costs for multi-channel video programming distributors ("MVPDs") and their customers. In just the latest example, Sinclair Broadcast Group, Inc., went dark on Frontier in six markets after insisting on excessive retransmission fees.[53] While the Commission may be somewhat limited by statute in terms of deciding the substantive outcome of negotiations or deciding a fair price, there is no need for the Commission to add further fuel to the fire by enforcing potentially anti-competitive networking non-duplication and syndicated programming exclusivity provisions. As Verizon explains, "[t]he Commission should eliminate its network non-duplication and syndicated programming exclusivity rules. These outdated rules prevent a video distributor from importing broadcast programming from alternative sources, involving the federal government for no reason in enforcing broadcasters' contractual rights and undermining competition for the provision of video services."[54]

These outdated rules needlessly provide a venue at the FCC for broadcasters to drive up retransmission fees. MVPDs like Frontier must already obtain rights from a television station if it will transmit the broadcast. Private contracts may grant certain broadcasters territorial rights to programming preventing out-of-market stations from allowing an MVPD to carry the content. Broadcasters, which have disproportionate powers in these negotiations, do not need another

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[53] *See* Letter from Mark D. Nielsen, Executive Vice President, Frontier, to William T. Lake, Chief, Media Bureau, Docket No. 15-216 (Jan. 1, 2017); *see also* Ben Munson, *Sinclair Channels Including Tennis Channel Dropping from Frontier*, FierceCable (Dec. 21, 2016), http://bit.ly/2hKXNsh.

[54] *See* 47 C.F.R. §§ 76.92 *et seq.*

venue at the FCC to enforce these private contractual rights. Indeed, in the context of the recent Lifeline modernization order, Commissioner Pai recently pointed out how unnecessary it can be for the Commission to enforce private contacts, particularly ones that are potentially anticompetitive.[55]

While repealing the network non-duplication and syndicated programming exclusivity rules may not be a cure-all for the current broken retransmission consent system, it will remove the Commission from actively adding fuel to the fire.

V. ELIMINATE DUPLICATIVE OUTAGE REPORTING REQUIREMENTS.

Commenters expressed widespread support for simplifying outage notifications and removing duplicative and burdensome requirements.[56] Frontier supports these proposals for simplifying what is now a three-step process into a two-step process. Frontier believes that this is a common-sense solution that will provide the Commission with all of the information it currently uses while alleviating the burden on carriers and improving the quality of outage reporting.

Additionally, the Commission should remove the separate and duplicative outage reporting requirement as part of eligible telecommunications carriers' annual reporting requirements. Specifically, the annual reporting requirement requires carriers to report outages

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[55] *See* Dissenting Statement of Commissioner Pai, *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) ("What is more, the FCC says it will serve as an enforcer of these one-year lock-up contracts, giving Lifeline carriers a stranglehold on their customers that regular carriers cannot get with a real, signed contract. . . . And it will force Lifeline subscribers into one-year contracts with carriers even if they don't want them."); *see also Sports Blackout Rules*, Report and Order, 29 FCC Rcd 12053 (2014) (Statement of Commissioner Ajit Pai) ("It is not the place of the federal government to intervene in the private marketplace to help sports leagues enforce their blackout policies") ("Sports Blackout Rules").

[56] Verizon Comments at 14-15.

under a standard that differs somewhat from the Network Outage Reporting System ("NORS"), and this requirement adds hundreds of additional hours of work to the reporting process with little to no corresponding benefit to the public interest. While the threshold for reporting under the NORS is an outage of at least 30 minutes affecting at least 900,000 telephone minutes or 667 OC3 minutes,[57] the high-cost annual reporting threshold is any outage of at least 30 minutes affecting at least ten percent of end users in a designated service area – there is no similar limitation of 900,000 telephone minutes or 667 OC3 minutes.[58]

The Commission can greatly reduce outdated obligations on high-cost recipients by removing this duplicative reporting obligation altogether. The Commission already receives extensive outage information from carriers through the NORS. The Commission does not need a duplicative report only from high-cost recipients as part of the annual 481 process. At a minimum, for purposes of the 481, the Commission should allow carriers to simply provide the reports that it was already required to provide as part of the NORS process. There is no indication that there is a basis for a different reporting threshold under the 481, and even if there is some theoretical basis for having a separate standard (there is not to Frontier's knowledge), it is unclear that the Commission has ever relied on the separate information that is required under this duplicative standard.

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[57] *See* 47 C.F.R. § 4.9(f).

[58] *See id.* § 54.313(a)(2).

VI. CONCLUSION.

It is long overdue for the Commission to address the disproportionate regulatory burden that applies to ILECs based on their long-since gone status as monopoly voice providers. Congress created the Biennial Review precisely to clear the regulatory underbrush that continues to unfairly tilt the regulatory playing field and distort investment. By conducting a comprehensive Biennial Review and removing regulations that apply to ILECs that apply solely because their past "incumbent" status, the Commission can level the regulatory playing field, promote investment in broadband, and help bring Title II into the 21st century.

Respectfully submitted,

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